

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JERRY MELVIN KEY,

Petitioner,

v.

CIVIL ACTION NO. 1:07cv99
(Judge Keeley)

**JOHN L. HENNING,
Randolph County Court Judge,**

Respondent.

REPORT AND RECOMMENDATION

I. BACKGROUND

On July 16, 2007, Jerry Key, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Following a notice of deficient pleading, the plaintiff paid the \$5.00 filing fee on July 18, 2007. On September 27, 2007, the petitioner filed a letter asking to withdraw his case. The undersigned has construed this to be a Motion to Dismiss.

II. ANALYSIS

Rule 41 of the Federal Rules of Civil Procedure provides for dismissal of actions. More particularly, Rule 41(a) provides for voluntary dismissal. Pursuant to Rules 41(a)(1), an action can be dismissed by the [petitioner] without order of court upon filing of a notice of dismissal at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. Because this matter has not been screened, the [respondent] has not been directed to respond, and there is no an answer or motion for summary judgment. Accordingly, this matter may be dismissed without order of the court.

III. RECOMMENDATION

In consideration of the foregoing, it is the undersigned's recommendation that the Clerk be

directed to close this case and dismiss it from the active docket of the Court.

Any party may file within ten (10) days after being served with a copy of this Recommendation with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Court. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of Court is directed to mail a copy of this Recommendation to the *pro se* plaintiff by certified mail, return receipt requested.

DATED: September 28, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE